IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-01-2007

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THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

WRIT PETITION Nos.18689, 21020, 24382 and 13180 of 2006

N.Balasubramaniam .. Petitioner in WP 18689/2006

Tamil Nadu Agriculturists
Association(No.5/2005),
Rep., by its President,
Deviyakurichi Post,
Thalaivasal Circle,
Athur Taluk,
Salem District. .. Petitioner in WPs 21020 and 24382 of 2006

Tamizhaga Vivasayeegal sangam
Rep., by its President
P.Koteeswaran,
Thalaivasal Post,
Attur Taluk,
Salem District. .. Petitioner in WP 13180/2006

Vs.

1.The Government of Tamil Nadu,
represented by Secretary to
Government, Rural Development
Department, Fort St. George,
Chennai-600 009.

2.The District Collector,
Salem.

3.The Assistant Director,
Rural Development,
Salem.

4.The Block Development Officer,
Thalaivasal. .. Respondents in WPs.18689 & 21020/2006

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5.Thalaivasal Panchayat rep.,
by its President T.Jesintha
Thalaivasal Attur Taluk,
Salem District. .. 5th Respondent in
WP 18689/2006

(R.5 impleaded as per order
of the Court dt.8.8.2006 in
M.P.No.3 of 2006 in
W.P.No.18689/2006)

WP No.13180/2006:

1.State of Tamil Nadu,
rep., by its Secretary,
Rural Development Department,
Fort St. George,
Chennai-600 009.

2.Inspector of Panchayats and
District Collector, Salem.

3.The Block Development Officer,
Thalaivasal Panchayat Union,
Salem District.

4.Deviyakurichi Panchayat
rep., by its President,
Diviyakurichi Post,
Attur Taluk,
Salem District.

5.Thalaivasal Panchayat,
Rep., by its President
T.Jesintha,
Thalaivasal Post,
Attur Taluk,
Salem District. .. Respondents

(R.5 impleaded as per order
of the Court dt.16.6.2006
in WPMP No.15175/2006 in
WP No.13180/2006)

WP No.24382/2006:

1.The District Collector/
Inspector of Panchayats,
Salem.

2.The Assistant Director,
Rural Development, Salem.

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3.The Block Development Officer,
Thalaivasal.

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4.The President,
Deviyakurichi Panchayat,
Salem District. .. Respondents

5.Thalaivasal Panchayat,
Rep., by its President
T.Jesintha,Thalaivasal Post,
Attur Taluk,Salem District. .. 5th Respondent
(R.5 impleaded as per
WPMP No.2/2006 dated 12.1.2007)

WP Nos.18689 and 21020 of 2006:

Writ petitions filed under Article 226 of Constitution of India praying for issue of Writs of Declaration, declaring Rule 8(1) and Section 242(2)(xxxvii) of Tamil Nadu Panchayats (Opening and Maintenance of Market) Rules, 2000 as illegal, unconstitutional and ultra vires the provisions of the Panchayats Act, 1994.

W.P.No.13180/2006:

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Certiorarified Mandamus, calling for the records on the files of the second respondent pertaining to the order passed in Na.Ka.No.2592/2005/A5 dated 26.4.2006 quash the same and consequently direct the respondents to forbear from interfering with the petitioners right to run the private market at Deviakurichi Panchayat as per the renewed licence dated 31.3.2006 for the year 2006-2007 and valid for the period from 1.4.2006 to 31.3.2007.

WP No.24382/2006:

Writ petition filed under Article 226 of Constitution of India praying for issue of a Writ of Certiorari, calling for the records of the first respondent herein in Na.Ka.No.3878/2006/A5 dated 10.6.2006 in respect of the private daily market in Deviakurichi Panchayat in Salem District and quash the same.

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For Petitioner in WPs.18169, 21020, 24382/06 : Mr.AR.L.Sundaresan, Senior Counsel for Ms.AL.Ganthimathi

For Petitioner in WP.13180/06: Mrs. A. V. Bharathi for Mr. C. Muthukumar

For Respondents in WP.Nos. 18689 & 21020/06 and 1 to 3 in WP.24382 and 13180/06 : Mr.S.Ramasamy, Addl. Advocate General for Mr.K.Elango, Special Govt. Pleader.

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For Respondent-5 in WPs 18689, 13180/2006 and 24382/2006 : Mr.C.Selvaraju, Senior Counsel for Mr.S.Mani.

For Respondent-4 in WPs 13180 and 24382/2006 : Mr.P.Jagadeesan

COMMON ORDER

Deviakurichi Panchayat forms part of the Thalaivasal Panchayat Union. There was a Private Daily Vegetable Market in Deviakurichi Panchayat, located in Survey No.47/3, which was run under a licence granted by the Panchayat in accordance with the provisions of the Tamil Nadu Panchayats Act. The original licence was in favour of three persons and was granted on 17.2.1999 and the licence was renewed from time to time till 31.3.2005. The said Private Market was discontinued thereafter.

2. After the aforesaid Private Market was discontinued, a Society registered under the Tamil Nadu Societies Registration Act, 1975 known as "Tamizhaga Vivasayeegal Sangam", filed an application to run a Private Daily Vegetable Market in Survey Nos.37/8B, 39/9, 39/10 and 39/11 in Deviakurichi Panchayat. By a resolution dated 25.2.2005, the Deviakurichi Panchayat granted licence to the said Association for the period from 1.4.2005 to 31.3.2006. However, the said licence was cancelled by the District Collector, Salem (Inspector of Panchayats) by his proceedings dated 11.5.2005 and 17.5.2005.

3. Challenging the cancellation of licence by the District Collector, the said Association viz., Tamizhaga Vivasayeegal Sangam filed a writ petition in W.P.No.17055 of 2005. The said writ petition was allowed by an order dated 26.9.2005 on the short ground that the District Collector failed to afford an opportunity to the licencee before cancelling the licence. Consequently, the cancellation order was set aside by this Court and the matter remitted back to the District Collector for taking action in accordance with law.

4. In accordance with the directions issued by this Court in W.P.No.17055 of 2005, the District Collector issued a show cause notice dated 8.10.2005. Immediately on receipt of the said notice, the Association filed a writ petition in W.P.No.34974 of 2005, challenging the validity of Rule 8(1) of the Tamil Nadu Panchayats (Opening and Maintenance of Market) Rules, 2000 (hereinafter called as the 'Rules'). The challenge to the Rule was made, since the said Rule sought to place a restriction upon the right of a person to set up a private market within a radius of 10 kms from a public market and the

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cancellation of the licence granted to the "Tamizhaga Vivasayeegal Sangam" was sought to be made only by invoking the provisions of the said Rule 8(1).

5. Since the Sangam filed W.P.No.34974 of 2005, challenging the validity of Rule 8(1) of the Rules, the notice dated 8.10.2005 issued by the District Collector was stayed by this Court by an interim order dated 28.10.2005. The said interim order was challenged in a writ appeal in W.A.SR.No.89089 of 2005. But the same was dismissed by the Division Bench by an order dated 15.11.2005. Subsequently, the interim order granted on 28.10.2005 in WPMP No.37920 of 2005 in W.P.No.34974 of 2005 was made absolute on 17.2.2006.

6. After the interim stay of further proceedings pursuant to the notice of the District Collector dated 8.10.2005 was made absolute in W.P.No.34974 of 2005, the Deviakurichi Panchayat passed a resolution on 31.3.2006 renewing the licence for the year 2006-2007 viz., for the period from 1.4.2006 to 31.3.2007.

7. After the renewal of licence, the "Tamizhaga Vivasayeegal Sangam" withdrew the writ petition in W.P.No.34974 of 2005 and consequently the interim order also got vacated. Thereafter, the District Collector (Inspector of Panchayats) passed an order dated 26.4.2006 in pursuance of his notice dated 8.10.2005, cancelling the original order of grant of licence dated 25.2.2005. Challenging the said order dated 26.4.2006, cancelling the original grant itself, the "Tamizhaga Vivasayeegal Sangam" has filed a writ petition in W.P.No.13180 of 2006.

8. Thereafter, one of the persons carrying on business in the Deviakurichi Private Market filed an independent writ petition in W.P.No.18689 of 2006, challenging the validity of Rule 8(1) of the Rules. Obviously, this writ petition has been necessitated on account of the fact that the "Tamizhaga Vivasayeegal Sangam" itself withdrew its challenge to the very same Rule in W.P.No.34974 of 2005, without reserving liberty to file another writ petition.

9. But subsequently, the Tamil Nadu Agriculturists Association filed an independent writ petition in W.P.No.21020 of 2006, challenging not only the aforesaid Rule 8(1) but also challenging the constitutional validity of Section 242 (2) (xxxvii) of the Tamil Nadu Panchayats Act, 1994 (hereinafter called as the 'Act').

10. In the meantime, the District Collector passed another order dated 10.6.2006, cancelling the resolution of the Deviakurichi Panchayat dated 31.3.2006 by which the licence originally granted for the year 2005-2006 was renewed for the year 2006-2007. Therefore, challenging the said order dated 10.6.2006, the Association filed the fourth writ petition in W.P.No.24382 of 2006.

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11. Thus in effect, there are four writ petitions in W.P.Nos.13180, 18689, 21020 and 24382 of 2006, wherein the petitioners seek the following reliefs:-

(a)W.P.No.13180 of 2006:- To set aside the order of the Collector dated 26.4.2006, cancelling the grant of the original licence itself.

(b) W.P.No.24382 of 2006:- Challenging the order of the Collector dated 10.6.2006, cancelling the renewal of the licence for the year 2006-2007.

(c) W.P.No.18689 of 2006:- For declaring Rule 8(1) of the Rules as unconstitutional.

(d) W.P.No.21020 of 2006:- To declare Section 242 (2)(xxxvii) of the Act and Rule 8 (1) as unconstitutional.

12. I have heard Mr.AR.L.Sundaresan, learned senior counsel appearing for the petitioners in all the writ petitions, Mr.S.Ramasamy, learned Additional Advocate General appearing for the official respondents, Mr.C.Selvaraju, learned senior counsel appearing for the Thalaivasal Panchayat, which is the fifth respondent in the writ petitions viz., W.P.Nos.18689 and 13180 of 2006 and Mr.P.Jagadeesan, learned counsel appearing for Devia Kurichi Panchayat, which has granted the licence and renewed it in favour of the "Tamizhaga Vivasayeegal Sangam".

13. As stated earlier, Deviakurichi Panchayat is one of the Panchayats coming within the Thalaivasal Panchayat Union. Thalaivasal Panchayat Union has a Public Market (Daily Vegetable Market), in existence from 1979. The Private Market for which licence was granted by Deviakurichi Panchayat in favour of "Tamizhaga Vivasayeegal Sangam" is located within a distance of 2 kms., from the Public Market in Thalaivasal. Therefore, objections were raised for the grant of licence to the Private Market at Deviakurichi, primarily on the ground that the business in the Public Market at Thalaivasal suffered a serious set back on account of the Private Market and that the Private Market at Deviakurichi ought not to have been granted a licence, in view of the prohibition contained in Rule 8(1) of the Rules. The said contention that the grant of licence for a Private Market by the Deviakurichi Panchayat was violative of Rule 8(1) of the aforesaid Rules was upheld by the District Collector (Inspector of Panchayats) by his orders dated 26.4.2006 and 10.6.2006.

14. One more ground on which the District Collector sought to cancel the licence granted for the Private Market was that the licence was granted by the Deviakurichi Panchayat without ascertaining the opinion of the Deputy Director of Public Health and Preventive Medicine as required by Rule 7(3) of the said Rules.

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15. Thus, the cancellation of licence granted for the Private Market, hinges upon the scope of Rules 7 and 8 of the aforesaid Rules.

16. Before proceeding to consider the scope of the aforesaid Rules, it is necessary to look into the substantive provisions contained in the Act and the relevant Rules. Section 147 of the Tamil Nadu Panchayats Act, 1994, deals with the opening of Public Markets, while Section 148 of the Act deals with licensing of Private Markets. Sections 147 and 148 of the Act read as follows:-

> "147. Public Markets.--(1) The panchayat union council may, after obtaining the previous written permission of the Inspector, provide places for use as public markets and, with the sanction of the Inspector, close any such market or part thereof.
>
> (2) Subject to such rules *as may be prescribed, the village panchayat or panchayat union council may after obtaining the previous written permission of the Inspector, levy any one or more of the following fees in any public market at such rates, not exceeding the maximum rates, if any, prescribed in that behalf as the panchayat union council or village panchayat may think fit:-
>
> (a) .. ..
> (b) .. ..
> (c) .. ..
> (d) .. ..
> (e) .. ..
>
> 148. Licensing of Private Markets.--(1)No person shall open a new private market or continue to keep open a private market unless he has obtained a licence from the village panchayat or panchayat union council, as the case may be, to do so. Such licence shall be renewed every year.
>
> (2)(a) The village panchayat or panchayat union council, as the case may be, shall grant the licence applied for subject to such conditions as it may think fit as to supervision and inspection, sanitation, weights and measures to be used, rents and fees to be charged and such other matters *as may be prescribed".
>
> (b) .. ..
> (c) .. ..
> (d) .. .."

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17. Rule 3 of the Tamil Nadu Panchayats (Opening and Maintenance of Market) Rules, 2000, deals with the opening and maintenance of Public Markets by the Panchayats Union, while Rule

4 deals with the opening and maintenance of Public Market by the Village Panchayat. Rule 4(3) is of relevance to the issue on hand and it reads as follows:-

> "(3) Notwithstanding anything contained in these rules, no new market shall be permitted, if it will affect the commercial validity of the already existing market either private or public, situated within 5 kilo metre radius from the proposed place."

18. Rule 7 deals with the licensing procedure for a Private Market. Sub Rule (1) and Sub Rule (3) of Rule 7 of the Rules read as follows:-

> "7. Licence for Private market.--(1) No person shall open and maintain a private market without obtaining a licence from the village panchayat. Such licence shall be renewed every year.
>
> (2) .. ..
>
> (3) In case the village panchayat or the panchayat union council agrees to approve the proposal, the executive authority or the commissioner, as the case may be, shall send the proposal to the Deputy Director of Public Health and Preventive Medicine of the District concerned for his opinion as to the suitability of the site on public health point of view within thirty days of the receipt of the proposal from the executive authority, or the commissioner, as the case may be, the Deputy Director of Public Health and Preventive Medicine shall communicate his remarks, failing which, the approval sought for, shall be deemed to have been granted."

19. From a perusal of Sections 147 and 148 of the Act, it is seen that Section 147 merely enables the Panchayat Union Council to provide places for use as Public Markets and it does not speak about the grant of licence. On the contrary, Section 148 speaks of a licence to open a Private Market. But Rules 3 and 4 of the aforesaid Rules, speak about the opening and maintenance of Public Markets and the permission to be obtained from the Inspector of Panchayats, though no procedure for licensing is contemplated in so far as a Public Market is concerned.

20. In so far as the grant of licence for a Private Market is concerned, Section 148(2) requires the Village Panchayat or the Panchayat Union Council to grant the licence subject to certain terms and conditions relating to (1) supervision and inspection, (2) sanitation, (3) weights and measures to be used, (4) rents and fees to be charged and (5) such other matters as may be prescribed.

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21. The Rules aforesaid were actually issued under G.O.Ms.No.3, Rural Development (C.4) Department, dated 4.1.2001, for the purpose of prescribing those "such other matters" as stipulated under Section 148(2)(a) of the Act.

22. In respect of a Public Market, Rules 3 and 4 enlist the criteria relevant for the purpose of enabling the Inspector of Panchayats to grant or refuse permission and they are as follows:-

> (a) Commercial viability of the proposed market within a radius of 10 kms.,
>
> (b) Acceptability of the proposed market by the public and the traders.
>
> (c) Health and sanitation aspect specified by the Deputy Director of Public Health and Preventive Medicine.

23. Apart from the aforesaid three considerations specified as relevant considerations, in so far as the grant of permission for a Public Market is concerned, Rule 4(3) extracted above, imposes a prohibition for permitting a new Public Market within a radius of 5 kms., from an existing Private or Public Market. Thus, the relevant considerations enlisted under Rule 3 (2)(a)(b) and (c) as well as Rule 4(2)(a)(b) and (c) as extracted above, are actually circumscribed by the prohibition contained under Rule 4(3) in so far as the permission for a Public Market is concerned.

24. However, the language employed under Rules 7 and 8 while prescribing the considerations as well as the procedure for the grant of licence for a Private Market, is totally different from the language employed under Rules 3 and 4. Rule 7(2) of the Rules requires a Person, a Firm or a Co-operative Society or the Panchayat Union Council which intends to open a Private Market to apply to the Executive Authority of the Village Panchayat or the Commissioner of the Panchayat Union Council seeking licence. Upon receipt of such an application, the Executive Authority of the Panchayat or the Commissioner of the Panchayat Union Council is required under Rule 7(3) and Rule 8 of the Rules, to take the following steps:-

> (a) Inspect the site and satisfy himself about its possibility of not affecting any Public Market of the Village Panchayat or the Panchayat Union Council, if any, functioning within a reasonable radius of 10 kms.
>
> (b) Place the proposal before the Village Panchayat or the Panchayat Union Council along with his remarks on the precautions for a decision on the proposal.
>
> (c) If the Village Panchayat or the Panchayat Union Council agrees to approve the

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proposal, send the proposal to the Deputy Director of Public Health and Preventive Medicine of the District concerned for his opinion as to the suitability of the site on public health point of view.

(d) Communicate the decision of the Village Panchayat to the applicant and

(e) Publish a Notification in the District Gazette.

25. From a conjoint reading of Rule 4(3) and 8(1), it is seen that the 5 kms radius embargo under Rule 4(3) appears to be mandatory, while the 10 kms radius factor appears to be only one of the several considerations to be taken into account. Interestingly, the 5 kms radius embargo is placed in relation to the opening of a Public Market while the 10 kms radius factor is in relation to the opening of a Private Market. Therefore, a reading of both the Rules together leads to an inevitable conclusion that despite the functioning of a Public Market within a radius of 10 kms., the Executive Authority of the Panchayat and the Village Panchayat are entitled to grant licence to a Private Market. In other words, despite the location of a Public Market within a radius of 10 kms., the Village Panchayat is entitled to take a decision to grant a licence to a Private Market.

26. Once it is found that the 10 kms radius prescription under Rule 8 (1) is only one of the several factors to be taken into account by the Licensing Authority, what remains to be seen is as to whether the Licensing Authority applied its mind to this relevant factor before deciding to grant the licence. The Licensing Authority viz., Deviakurichi Panchayat has filed a counter-affidavit pointing out three factors viz., (a) that they had taken into account the existence of the Public Market at Thalaivasal within a radius of 10 kms.; (b) that the existence of a Private Market within Deviakurichi Panchayat is essential for its own sustenance since it provided an income of Rs.2,35,566/- in the form of licence fee; and (c) that another Private Market in Survey No.47/3 was run from the year 1999 onwards with renewal granted year after after, without any objections or protest from Thalaivasal Panchayat Union Public Market.

27. Therefore, it is clear that the Executive Authority of Deviakurichi Panchayat and the Village Panchayat took into consideration the relevant factors before granting licence on 25.2.2005 and renewing the same by the resolution dated 31.3.2006. Once it is found that the Licensing Authority took into account the relevant factors before taking a decision to grant the licence, the power of the Appellate Authority viz., the Inspector of Panchayats (District Collector) gets circumscribed. The power of the Inspector of Panchayats to revoke any resolution passed by a Village Panchayat is found in Section 202 of the Act. Section 202 (1) reads as follows:-

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"202. Power to suspend or cancel resolution, etc. under the Act.--(1) The Inspector may, by order in writing ---

(i) suspend or cancel any resolution passed, order issued, or licence or permission granted, or

(ii) prohibit the doing of any act which is about to be done or is being done, in pursuance or under colour of this Act, if in his opinion, --

(a) such resolution, order, licence, permission or act has not been legally passed, issued, granted or authorised, or

(b) such resolution, order, licence, permission or act is in excess of the powers conferred by this Act or any other law or an abuse of such powers or is considered by the Inspector to be otherwise undesirable, or

(c) the execution of such resolution or order, or the continuance in force of such licence or permission or the doing of such act is likely to cause danger to human life, health or safety, or is likely to lead to a riot or an affray:

Provided that nothing in this sub-section shall enable the Inspector to set aside any election which has been held."

28. In this case, the order dated 26.4.2006 cancelling the original grant of licence and the order dated 10.6.2006 cancelling the renewal, have been passed by the District Collector in exercise of the power conferred under Section 202(1)(ii)(a) and (c). In other words, the District Collector has passed the orders under challenge, after coming to the conclusion that the resolution passed by the Deviakurichi Panchayat was not legally passed and that the execution of such resolution is likely to cause danger to human life, health or safety or is likely to lead to a riot or an affray.

29. Therefore, we have to examine whether the resolution passed by the Deviakurichi Panchayat was legally passed or not and whether the execution of the resolution is likely to cause danger to human life, health or safety or likely to lead a riot or an affray.

30. As stated earlier, the Executive Authority of the Deviakurichi Panchayat as well as the Village Panchayat have taken into account the relevant considerations before issuing the licence to the Private Market. The resolution is attacked only on two grounds viz., (a) that it violates the 10 kms radius Rule under Rule 8(1); and (b) that the opinion of the Deputy Director of Public Health and Preventive Medicine was not obtained. Since the 10 kms radius Rule is not a total prohibition but only one of the relevant factors to be taken into account by the Executive

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Authority, the resolution cannot be said to be illegal on the ground of violation of the 10 kms radius Rule, since the same has been taken into consideration by the Executive Authority. Hence, the first ground on which the resolution is considered to have been not legally passed, fails.

31. In so far as the second ground is concerned, Rule 7 (3) extracted above, contains a deeming provision if the Deputy Director of Public Health and Preventive Medicine fails to offer his remarks within 30 days of receipt of the proposal. In paras-8 and 9 of the counter-affidavit filed by the Deviakurichi Panchayat, a positive averment is made that an application was made to the Deputy Director on 28.5.2005 itself and that the Officers inspected the place long time back. Therefore, the deeming provision under Rule 7(3) has come into play. Under such circumstances, both the grounds on which the District Collector considered the resolution of the Panchayat to have been not legally passed in terms of Section 202 (1)(ii)(a) of the Act, fail.

32. Coming to the likelihood of danger to human life, health or safety or the likelihood of a riot or an affray, provided as one of the grounds for cancellation of resolution under Section 202(1)(ii)(c), the District Collector has not recorded any outbreak of violence or hazard to health or safety, on account of the grant of licence by Deviakurichi Panchayat for the Private Market. It is admitted by the District Collector himself even under the impugned order that a Private Market was in existence in Deviakurichi Panchayat from the year 1999 and the same had already had an impact upon the income of the Public Market at Thalaivasal from 1999 onwards. The existence of a Private Market in Deviakurichi Panchayat from the year 1999 had not resulted in any danger to human life, health or safety and has not led to any riot or affray. The Private Market run in Deviakurichi Panchayat from the year 1999 in Survey No.47/3 was closed in the year 2005 and the Deviakurichi Panchayat has granted a licence to "Tamizhaga Vivasayeegal Sangam" on 25.2.2005 to run a Private Market in another Survey Number. The President of Deviakurichi Panchayat filed an affidavit to the effect that the Private Market which was in existence from 1999 was also located within a distance of 2 kms from the Public Market at Thalaivasal and the new Market for which licence was granted on 25.2.2005 is located at a distance of half a kilo metre from the old Private Market in Deviakurichi.

33. Thus, in my considered view, the grounds on which the Collector is empowered to cancel the resolution of a Village Panchayat under Section 202(1)(ii)(a) and (c) were not available for the District Collector in the present case. Consequently, the orders of the Collector dated 26.4.2006 and 10.6.2006 cancelling the resolutions of Deviakurichi Panchayat granting licence for the year 2005-2006 and renewing the same for the year 2006-2007 are liable to be set aside.

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34. As seen from the orders of the District Collector impugned in the writ petitions, the District Collector had been carried away mainly by the fact that the income of the Public Market in Thalaivasal Panchayat Union fell rapidly after the opening of the Private Market in Deviakurichi Panchayat. But the fall in income for the Public market at Thalaivasal started from 1999 onwards. Thalaivasal Panchayat did not raise a little finger in protest against the licensing of a Private Market from the year 1999-2000 and the renewals granted to the same for the years 2000-2001, 2001-2002, 2002-2003, 2003-2004 and 2004-2005. Therefore, Thalaivasal Panchayat cannot object to the grant of licence to a Private Market for the year 2005-2006 and its renewal in 2006-2007.

35. The Tamil Nadu Panchayats Act, 1994, itself was enacted with a view to establish a Three Tire Panchayat Raj System in keeping with the Constitution (73rd Amendment) Act, 1992, relating to Panchayats, for greater participation of the people so as to make them institutions of self-government. Therefore, each Panchayat is entitled to augment its own financial resources for the purpose of achieving self-governance. On the ground that the income of a Public Market located in one Panchayat Union, is affected by the licence granted to a Private Market in another Panchayat, such right to self-governance vested upon each Panchayat cannot be taken away or interfered with. The Public Market at Thalaivasal will have to sustain itself, on the basis of its own merits, in the wake of competition from a Private Market in a neighbouring Panchayat. It cannot seek to kill healthy competition by seeking protection under statutory provisions. In Nataraj Agencies vs. The Secretary, Ministry of Petroleum and Natural Gas (2005 (1) CTC 394), the Division Bench of this Court held as follows:-

> "3. The Supreme Court in Mithilesh Garg vs. Union of India, AIR 1992 SC 443, held that a rival businessman cannot file a writ petition, challenging the setting-up of a similar unit by another business-place would adversely affect his business interest, even if the setting-up of the new unit is in violation of law. In Mithilesh case, cited supra, the Supreme Court followed its own decision in Rice and Flour Mills vs. N.t.Gowda, AIR 1971 SC 246, wherein it was held that a rice mill-owner has no locus standi to challenge under Article 226, the setting up of a new rice-mill by another even if such setting up be in contravention of S.8(3)(c) of the Rice Milling Industry (Regulation) Act, 1958 because no right vested in such an applicant is infringed.
>
> 4. In the present case, the only grievance of the appellant is that if the fourth respondent is permitted to set up her retain

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outlet within one kilometer radius of the appellant's outlet, his business interest would be adversely affected. In our opinion, the appellant has no locus standi at all to complain against the setting up of a rival retail outlet by the fourth respondent, near his place of business, on the ground that would affect his business interest, inasmuch as the damage, if any, suffered thereby was damnum sine injuria-damage without infringement of legal right. In our opinion, this will only result in promoting competition among the traders, which is good for the consumers. Merely because some of the customers may switch over to the rival retail outlet does not mean that public interest will suffer rather, in our opinion, it will benefit the consumers because, when there is competition, the businessmen are compelled to provide better quality products at reasonable rates."

Therefore, the writ petitions W.P.Nos.13180 of 2006 and 24382 of 2006 are allowed and the orders of the District Collector dated 26.4.2006 and 10.6.2006 are set aside. No costs.

36. In view of my findings in the writ petitions arising out of the orders of the District Collector, I do not propose to go into the Constitutional validity of Rule 8 (1) of the Rules or Section 242 (2) (xxxvii) of the Act. Therefore, the writ petitions challenging the aforesaid provisions in W.P.Nos.21020 of 2006 and 18689 of 2006 are closed. No costs.

Svn.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Secretary to Government,
Govt. of Tamil Nadu,
Rural Development Department,
Fort St. George,
Chennai-600 009.

2.The District Collector,
Salem.

3.The Assistant Director,
Rural Development,
Salem.

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4.The Block Development Officer,
Thalaivasal Panchayat Union,
Salem District.

5.The District Collector/Inspector of Panchayats,
Salem.

6.The President,
Deviyakurichi Panchayat
Attur Taluk,
Salem District.

7.The President
Thalaivasal Panchayat,
Thalaivasal,
Attur Taluk,
Salem District.

+ 2 ccs to Mr. S. Mani, Advocate SR No. 2608

+ 1 cc to M/s. A. L. Ganthimathi, Advocate, SR No.2594

+ 1 cc to Mr. P. Jagadeesan, Advocate, SR No.2578

+ 1 cc to Ms. A. V. Bharathi, Advocate, SR No.2638

+ 4 ccs to the Government Pleader, SR Nos. 2880 2881 2882 2883

BV(CO)
SR/18.1.2007

Common Order in
WP Nos.18689, 21020
24382 and 13180
of 2006

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